

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/779,943 Examiner BOBBY RAMDHANIE	Applicant(s) TATSUJI, NOBUYUKI Art Unit 1797
<i>–The MAILING DATE of this communication appears on the cover sheet with the correspondence address –</i>		
THE REPLY FILED 18 April 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.		
<p>1. <input checked="" type="checkbox"/> The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:</p> <p>a) <input checked="" type="checkbox"/> The period for reply expires <u>3</u> months from the mailing date of the final rejection.</p> <p>b) <input type="checkbox"/> The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.</p> <p>Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).</p>		
<p>Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).</p>		
NOTICE OF APPEAL		
<p>2. <input type="checkbox"/> The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).</p>		
AMENDMENTS		
<p>3. <input checked="" type="checkbox"/> The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will <u>not</u> be entered because</p> <p>(a) <input type="checkbox"/> They raise new issues that would require further consideration and/or search (see NOTE below);</p> <p>(b) <input type="checkbox"/> They raise the issue of new matter (see NOTE below);</p> <p>(c) <input checked="" type="checkbox"/> They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or</p> <p>(d) <input type="checkbox"/> They present additional claims without canceling a corresponding number of finally rejected claims.</p> <p>NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).</p>		
<p>4. <input type="checkbox"/> The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).</p>		
<p>5. <input type="checkbox"/> Applicant's reply has overcome the following rejection(s): _____. </p>		
<p>6. <input type="checkbox"/> Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).</p>		
<p>7. <input checked="" type="checkbox"/> For purposes of appeal, the proposed amendment(s): a) <input checked="" type="checkbox"/> will not be entered, or b) <input type="checkbox"/> will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.</p> <p>The status of the claim(s) is (or will be) as follows:</p> <p>Claim(s) allowed: _____</p> <p>Claim(s) objected to: _____</p> <p>Claim(s) rejected: <u>1,2 and 5</u></p> <p>Claim(s) withdrawn from consideration: <u>3 and 4</u>.</p>		
AFFIDAVIT OR OTHER EVIDENCE		
<p>8. <input type="checkbox"/> The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will <u>not</u> be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).</p>		
<p>9. <input type="checkbox"/> The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will <u>not</u> be entered because the affidavit or other evidence failed to overcome <u>all</u> rejections under appeal and/or appellant fail to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).</p>		
<p>10. <input type="checkbox"/> The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.</p>		
REQUEST FOR RECONSIDERATION/OTHER		
<p>11. <input checked="" type="checkbox"/> The request for reconsideration has been considered but does NOT place the application in condition for allowance because: <u>See Continuation Sheet</u></p>		
<p>12. <input type="checkbox"/> Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____</p>		
<p>13. <input type="checkbox"/> Other: _____</p>		
<p>/Walter D. Griffin/ Supervisory Patent Examiner, Art Unit 1797</p>		

Continuation of 11. does NOT place the application in condition for allowance because:

Applicants allege that Goto et al does not disclose the apparatus of the instant application. Examiner respectfully disagrees. Applicants have requested the Examiner be more specific to the rejections. Examiner is happy to detail the rejection in a more detailed fashion to clarify what Applicants are alleging as blameless.

Applicants are attempting to claim an apparatus by using product by process claim.

Goto et al discloses the invention of Claims 1, 2, and 5.

For Applicant's Claim 1, Goto et al discloses an automatic sampler for injecting a sample into a sample introducing portion in communication to a column of a liquid chromatography (See Field of Invention, specifically HPLC), comprising: A) A needle for sucking the sample from a sample liquid bath and injecting the sample into the sample introducing portion (See Goto et al's Claim 3; specifically needle); B) A first rinsing section for rinsing said needle by soaking said needle in a first rinsing liquid, in a first rinsing liquid, in which the first rinsing liquid in said first rinsing bath is not exchanged during the rinsing operation (See Goto et al Claim 1 – since the needle is said to be inserted into a washing or rinsing liquid – there is liquid in the rinsing section); and C). A second rinsing section for rinsing said needle by soaking said needle in a second rinsing liquid, in a second rinsing bath, in which the second rinsing liquid, in said second rinsing bath is exchanged during the rinsing operation, wherein said needle is rinsed by at least one rinsing section selected from said first rinsing section and said second rinsing section (See Goto et al Claim 2 which corresponds to [0017] which specifically states that "washing bottle 45 is only a sole example though a plurality may be established." This is taken to mean that a second, third, fourth, etc. rinsing section may be employed).

6. For Applicant's Claim 2, Goto et al discloses the automatic sampler according to Claim 1, further comprising a switching section (See Goto et al [0013 & 0015]; specifically 6-way port valve item 20) the second rinsing liquid for use with said second rinsing section from among a plurality of rinsing liquids (See Goto et al [0012] & Goto et al's Claim 2; and specifically [0017] & [0030] which specifically discloses a plurality of other rinsing sections may be utilized with different sample liquids or washing liquids).

For Applicant's Claim 5, Goto et al discloses the automatic sampler according to Claim 1, further comprising: A pump fluidly connected to the second liquid bath, wherein said pump is adapted to supply the second rinsing liquid to the second rinsing bath so as to exchange the second rinsing liquid in the second liquid bath (See Goto et al, Figure 1 specifically Item 25; this pump is fluidly connected to all of the baths of this invention. The description of fluidly does not constitute that the pump is directly connected to the bath. In fluid connection may refer to the function of being able to fluidly move fluid to this bath with ease. Further, the intended use as the applicant claims has been given a relative degree of patentability weight despite the functionality is an intended use. Examiner takes the position that the pump is fluidly connected via the 6-port valve which can be used for two, three, four, etc. baths).

Examiner would like to point out that although no new rejections are being made, Goto et al discloses a second pump (See Goto et al, Figure 1 specifically Item 42) which is connected to a rinsing liquid storage tank which is used for the removal of the washing liquid from a rinsing bath container. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the rinsing sections of Goto et al with this pump to perform the same function of removing the washing liquids from each of these rinsing baths because this would allow a clean solution to be used to solve the problem that Goto et al discloses about conventional methods, which Goto et al specifically states that it fails to completely wash the exterior surface of the related needle (See Goto et al Page 5, Specifically [0006]). This teaching, suggestion, and motivation from Goto et al, in combination with the teachings of the multiple rinsing baths would more than provide a *prima facie case* of obviousness for a method of rinsing a needle as well as anticipate the product by process claims of the instant application.